

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

TALAYA CLARKE, et al.,

Plaintiffs,

v.

ORGANON USA INC., et al.,

Defendants.

No. C 13-2290 CW

ORDER GRANTING  
MOTION TO STAY;  
DENYING MOTION TO  
REMAND WITHOUT  
PREJUDICE (Docket  
Nos. 11, 13)

On May 23, 2013, Defendants Organon USA Inc., Organon Pharmaceuticals USA Inc. LLC, and Merck & Co., Inc. moved to stay this action pending a decision by the Judicial Panel on Multidistrict Litigation (JPML) to transfer this case. Plaintiffs oppose the stay, arguing that the stay would delay the Court's ruling on their motion to remand. Because this case will likely be transferred to the Eastern District of Missouri, where a multidistrict litigation (MDL) involving Defendants is currently pending, the Court grants the motion to stay.

DISCUSSION

"When evaluating a motion to stay proceedings pending a transfer to a MDL court, a primary factor to consider is the preservation of judicial resources. Staying an action pending transfer can help prevent duplicative litigation and inconsistent rulings." Couture v. Hoffman-La Roche, Inc., 2012 WL 3042994, at \*2 (N.D. Cal.) (citing Rivers v. Walt Disney Co., 980 F. Supp. 1358, 1360-61 (C.D. Cal. 1997)).

Here, judicial economy favors a stay. Several other cases in this district raise the same jurisdictional and factual issues as

1 the present case and the JPML has already transferred some of  
2 these cases to the Eastern District of Missouri.<sup>1</sup> A stay will  
3 therefore avoid duplicative litigation and prevent inconsistent  
4 rulings on common questions that the MDL court is likely to  
5 address.

6 Plaintiffs argue that the Court must decide their motion to  
7 remand before considering Defendants' motion to stay. However,  
8 the "Ninth Circuit has not expressly adopted this approach" and  
9 courts in this district have routinely taken a different approach.  
10 Conroy v. Fresh Del Monte Produce, Inc., 325 F. Supp. 2d 1049,  
11 1053 (N.D. Cal. 2004); see also Freitas v. McKesson Corp., 2012 WL  
12 161211 (N.D. Cal.) ("[O]ther courts in the Northern District,  
13 including this one, have made clear that courts are not bound to  
14 preliminarily consider the merits of a remand motion before  
15 considering a motion to stay."). Indeed, this Court granted a  
16 motion to stay earlier this year in another case involving the  
17 same claims and Defendants as the present case despite the fact  
18 that the plaintiffs in that case had filed a motion to remand.  
19 Wilson, et al. v. Organon USA, Inc., et al., Case No. 13-0705,  
20 Docket No. 16 (granting stay without written order). Other courts

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22 <sup>1</sup> The JPML's recent actions indicate that this case is also likely  
23 to be transferred to the Eastern District of Missouri. On June 4, 2013,  
24 the JPML issued a conditional transfer order in this case after finding  
25 that this action "involve[s] questions of fact that are common to the  
26 actions previously transferred to the Eastern District of Missouri."  
27 MDL No. 1964, Docket No. 950. Although Plaintiffs filed a timely notice  
28 of opposition to the transfer with the JPML on June 11, 2013, this is  
not likely to prevent the transfer. The JPML has recently rejected  
arguments opposing MDL transfers of other NuvaRing® actions on the  
grounds that there were pending motions to remand in those cases. See  
Transfer Order, MDL No. 1964, Docket No. 961 ("Plaintiffs instead base  
their arguments against transfer primarily on the pendency of motions to  
remand their respective actions to state court. Plaintiffs can present  
their motions for remand to the transferee judge.").

1 in this district have reached the same conclusion in recent cases  
2 involving these claims and Defendants. See, e.g., Burton v.  
3 Organon USA Inc., 2013 WL 1963954 (N.D. Cal.) ("Since the question  
4 whether McKesson is a proper defendant in the NuvaRing® cases is  
5 now before the MDL, the court finds that judicial economy would be  
6 better served by staying this case pending the transfer, rather  
7 than by considering the motion to remand."); Tucker v. Organon  
8 USA, Inc., 2013 WL 2255884 (N.D. Cal.) ("Permitting [the MDL  
9 court] to resolve the issue of fraudulent joinder globally, as  
10 opposed to adjudicating the issue prior to transfer, promotes  
11 judicial consistency and avoids conflicting judgments.").  
12 Accordingly, Plaintiffs' pending motion to remand does not  
13 preclude the Court from granting a stay.

14 CONCLUSION

15 For the reasons set forth above, Defendants' motion to stay  
16 (Docket No. 11) is GRANTED. Plaintiffs' motion to remand (Docket  
17 No. 13) is DENIED without prejudice.

18 IT IS SO ORDERED.

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20 Dated: July 10, 2013

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CLAUDIA WILKEN  
United States District Judge